The City of New York

POLICE DEPARTMENT

August 21, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Edward O'Connell
Tax Registry No. 916333
34 Precinct
Disciplinary Case No. 2011-5001

The above-named member of the Department appeared before me on March 6, 2014, charged with the following:

1. Said Police Officer Edward O'Connell, while assigned to the 34th Precinct, on or about and between February 8, 2010 and April 11, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Y. Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Respondent was a Patrolmen's Benevolent Association (PBA) delegate who was assigned to the 34 Precinct and that on February 8, 2010, Police Officer Person A, a PBA delegate assigned to the 40 Precinct, telephoned Respondent and asked him to take care of a summons that had been issued that day to a motorist who was driving an uninsured vehicle and that Respondent subsequently sent a text message to Person A informing him that he had taken care of that summons.

On June 3, 2010, Person A sent Respondent a text message in which he asked Respondent to take care of a summons that had been issued on June 2, 2010 by Police Officer Nunez in the 34 Precinct as the result of an unreasonable noise complaint. Respondent subsequently exchanged text messages with Person A in which he told Person A that he could not locate this summons. [Department's Exhibit (DX) 1 is a transcription of the text message].

Finally, it is undisputed that on June 3, 2010, Police Officer Person B, a PBA delegate who was assigned to the 46 Precinct, telephoned Respondent and asked him to take care of a summons that had been issued on June 3, 2010 by a police officer assigned to the 34 Precinct as the result of an unreasonable noise complaint. [DX 2 is a transcription of the conversation and two subsequent voicemail messages]. Respondent spoke to the police officer who had issued this summons and Respondent then exchanged text messages with Person B. [DX 3 is a transcription of the text messages].

The Department Advocate's Case

The Assistant Department Advocate called Sergeant John Ortiz as her only witness.

Sergeant John Ortiz

Ortiz, who has been assigned to the Warrants Division for the past five months, testified that during the eight year period prior to his assignment to the Warrants Division he was assigned to Internal Affairs Bureau (IAB) Group 21. He was assigned to the Bronx ticket-fixing investigation and monitored wiretaps which intercepted telephone conversations of police officers who were assigned to precincts in the Bronx and who served as PBA delegates.

Ortiz testified that he conducted an investigation into whether the three summonses that Person A and Person B had requested that Respondent take care of had or had not been processed and adjudicated. He ascertained that two of the summonses had not been processed and that the third summons had been adjudicated and the person who had been served with that summons had pleaded guilty.

On April 12, 2011, Ortiz conducted an official Department interview of Respondent which was recorded and transcribed (DX 4). At this interview Respondent was asked the following questions and gave the following answers (DX 4 p. 8):

Question: "In the last two years, how many times would you say you have been approached or you have been contacted to take care of a summons?"
Respondent: "A few times, maybe a dozen."
Question: "About twelve times?"
Respondent: "Yeah."

Later during this interview Respondent was asked the following questions and gave the following answers (DX 4 p. 17-18):

Question: "About how many times would you say you fix summonses?"
Respondent: "Honestly I don't know exactly how many. I've done it a few times."
Question: "In the last year, two years?"
Respondent: "I would say maybe a dozen times."
Question: "How many?"
Respondent: "Maybe a dozen."
Question: "So monthly you get an average of how many requests?"
Respondent: "Maybe once a month."

Later during this interview Respondent was asked the following question and gave the following answer (DX 4 p. 23):

Question: "So over the last two years, on a monthly average, I was asking you, you said one you're getting?"
Respondent: "I would say maybe one a month."

On cross-examination, Ortiz confirmed that Respondent had admitted that he had taken care of the summons that had been issued on February 8, 2010, and that Respondent's official Department interview was held in April, 2011. Ortiz agreed that he was aware that the 18-month statute of limitations period applied to Respondent's action of taking care of that summons. He also agreed that there was no crime exception charge against Respondent and that if Respondent was served with charges in November, 2011, that would be over 18 months from February 8, 2010. Ortiz also confirmed that he was aware of the 18-month statute of limitations requirement when he conducted Respondent's official Department interview and that at that interview he never specifically asked Respondent whether he had taken care of any summonses within the previous 18 months.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 19-year member of the service who has been assigned to the 34 Precinct for his entire career, recalled that he has served as a PBA delegate for the past seven years. Respondent confirmed that on February 8, 2010, he received a telephone call from Person A who requested that he take care of an uninsured vehicle ticket. Respondent "pulled the ticket" which prevented the proper adjudication of this summons.

Respondent also confirmed that on June 3, 2010, he received a telephone call from Person A who requested that he take care of a ticket issued for a noise complaint. Respondent did not find that ticket which resulted in the ticket being properly adjudicated and paid.

Respondent further confirmed that on June 3, 2010, he also received a telephone call from Person B who requested that he take care of a ticket issued for a noise complaint. Respondent testified that he believes that he took care of that ticket although he was not certain. Respondent recalled that he had spoken to the police officer who had issued this summons and that when this officer told him that the person the summons had been issued to was belligerent to him, Respondent left it up to the officer to decide what he wanted to do with this summons.

Respondent confirmed that before the commencement of his official Department interview, he was not provided with a list of these three summonses nor was he provided with any transcripts of text messages he had sent or received or any transcripts of any telephone conversations.

FINDINGS AND ANALYSIS

It is charged that between February 8, 2010 and April 11, 2011, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on multiple occasions he assisted and/or requested the assistance of other MOS to prevent the processing and adjudication of multiple summonses issued to various individuals.

Respondent's statute of limitations claim

Respondent does not dispute that on February 8, 2010, Person A requested that he take care of a summons that had been issued to a driver of an uninsured vehicle and that Respondent "pulled" this ticket which prevented the proper adjudication of this summons. However, Respondent asserts that this misconduct is time-barred under the statute of limitations.

The measuring period for the 18-month limitation period for commencing a disciplinary action charging non-criminal misconduct[1] is from the date the misconduct is committed to the date that charges and specifications are first served.[2] The instant charges and specifications were first served on Respondent on November 22, 2011. Respondent argued that each of his acts of assisting in preventing the processing or adjudication of a summons constituted a separate, distinct offense. Even if this were so, the summons fixing misconduct he engaged in at the request of Person A and Person B on June 3, 2010 would not be time-barred under the statute of limitations because charges

[1] Under Civil Service Law Section 75(4).

[2] Mikoleski v. Bratton 249 AD2d 83, 671 NYS2d 75 (1st Dept 1998).

and specifications were served on Respondent on November 22, 2011, 17 months and 19 days after his summons fixing misconduct on June 3, 2010.

Although charges and specifications were served on Respondent more than 18 months after his summons fixing misconduct on February 8, 2010, the Department Advocate argued that admissions Respondent made at his April 12, 2011 official Department interview establish that his misconduct of assisting in the prevention of the processing or adjudication of summonses did not end on February 8, 2010 or even on June 3, 2010. The Advocate argued that these admissions establish that the summons assistance misconduct he engaged in on February 8, 2010 and on June 3, 2010 was part of an ongoing, regular course of misconduct that he continued to engage in right up until his official Department interview on April 12, 2011. The Advocate argued that because Respondent's misconduct was continuous it served to toll the expiration of the 18-month statute of limitations regarding his summons fixing misconduct on February 8, 2010.

Respondent's admissions at his official Department interview

During his official Department interview on April 12, 2011, Respondent was asked three times how often he had received requests from members seeking to have him take care of a summons. Respondent consistently answered that he normally received such requests on average about once each month. (DX 4 p. 17-18 and 23)

I find it especially significant that when Respondent was asked, "About how many times would you say you fix summonses…*in the last year* (italics added), two years?" Respondent answered, "I would say maybe a dozen times," and that when he was asked, "So monthly you get an average of how many requests?" he answered,

"Maybe once a month." (DX 4 p. 17-18) It is clear that "in the last year" referenced the 12-month period that immediately preceded April 12, 2011. Thus, although Respondent had the clear opportunity to qualify his answer by asserting that he had not attempted to fix any summonses during the 12-month period immediately preceding his official Department interview, he did not do so.

As a result of Respondent's admission that on average he had attempted to fix about one summons every month, I find that his misconduct of assisting in the prevention of the processing or the adjudication of summonses constituted a regular, ongoing course of misconduct that was continuous in nature. This finding is supported by applicable case law[3] and previous Departmental disciplinary decisions where statute of limitations claims have been rejected because the misconduct in question was found to have been continuous in nature.[4] Thus, I find that not only is Respondent's misconduct of preventing the processing of a summons on February 8, 2010 not time-barred under the statute of limitations, I also find that Respondent, based on his admissions, assisted in the prevention of the processing or the adjudication of as many a dozen other summonses between June 3, 2010 and April 12, 2011.

Conclusion

Based on the admissions Respondent made at his official Department interview that he had tried to fix as many a dozen other summonses in addition to the summonses that he had fixed or tried to fix on February 8, 2010 and June 3, 2010, I find that the

[3] See Canna v. Town of Amherst, 55 AD3d 1269, 865 NYS2d 443 (4th Dept 2008); Matter of Steyer, 129 AD2d 994, 514 NYS2d 298 (4th Dept 1987), affirmed 70 NY2d 990, 526 NYS2d 422.

[4] See *Case No. 2010-1658* (Dec. 10, 2012) and *Case No. 2006-81622* (Nov. 19, 2007).

Advocate met her burden of proving that on multiple occasions Respondent assisted other MOS to prevent the processing and adjudication of multiple summonses issued to various individuals.

Therefore, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. He has no prior formal disciplinary record.

Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that on multiple occasions he assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals

The Advocate recommended that Respondent be suspended for five days and also that he forfeit 25 vacation days, for a total forfeiture of 30 days, that he serve one year on dismissal probation, and that he also be assessed a $1500. fine.

In determining a penalty recommendation, I have taken into consideration the penalties imposed in previous cases where MOS have engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by assisting in the prevention of the processing or the adjudication of two or more summonses. Most recently, in *Case No. 2011-5618* (Jan. 15, 2014), an eight-year police officer who had no prior formal

disciplinary record forfeited five suspension days and 25 vacation days and was placed on dismissal probation for assisting in the prevention of the processing or adjudication of two summonses. More recently, in *Case No. 2011-5714* (July 18, 2014), a nine-year police officer who had no prior formal disciplinary record forfeited five suspension days and 25 vacation days and was placed on dismissal probation for requesting the assistance of another officer to prevent the processing or adjudication of summonses on two occasions.

I have also taken into consideration Respondent's performance evaluations, his Department Recognition Summary, and the fact that he has no prior disciplinary record in over 19 years of service.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent be suspended for five days and that he forfeit 25 vacation days for a total forfeiture of 30 days.

Respectfully submitted,

Robert Vinal RM

Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

OCT 15 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER EDWARD O'CONNELL
TAX REGISTRY NO. 916333
DISCIPLINARY CASE NO. 2011-5001

Respondent received an overall rating of 3.5 on his 2013 performance evaluation, 4.0 on his 2010 evaluation, and 4.0 on his 2009 evaluation. He has been awarded one Excellent Police Duty medal. [redacted] He has no formal disciplinary record and no monitoring records.

For your consideration.

Robert Vinal

Robert W. Vinal
Assistant Deputy Commissioner – Trials